IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Bangur Charitable Trust Vs. State of Rajasthan & Ors.

D.B.CIVIL SPECIAL APPEAL (W) NO.27/1999
against the Order dated 10.11.1998 passed by Hon'ble Justice Mr. B.J. Shethna in S.B. Civil Writ Petition No. 3881/1998.

Date of Judgment :: 02.06.2006

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE R.P.VYAS

Mr.P.C. Sharma, for the appellant/s
Mr.L.R.Mehta)
Mr.J.R.Beniwal)
Mr.I.R.Choudhary) for the respondent/s
Mr.L.R. Upadhyay, Dy. Govt Advoate.

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Heard learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dated 10.11.1998 by which the writ petition filed by the petitioner was dismissed.

At the out-set, we may refer to the erroneous assumption on the basis of which the

judgment is founded. The judgment under challenge proceeds on the assumption that the land has been alloted to Late Shri Mangi Ram Banger and later on to the Trust settled by him. The trust has merely come forward with assertion that in lieu of defence donation of erst while Marwar State has agreed to set apart certain lands as gochar. No claim to land itself has been laid by the trust.

The foundation of the petition is that during second world war, late Shri Mangi Ram Banger contributed Rs. 51,000/- towards war fund. In consideration of this gesture on request of donor 20,000 bighas of land was reserved as Gochar land, spread over in different parts of erstwhile Marwar State, no demand was ever made to grant any interest in the land in question in favour of donor.

The petition was on behalf of the trust to see that the lands which have been declared as Gochar land in pursuance of the order of the erstwhile State of Marwar at the instance of aforesaid donor are not converted into Non-Gochar land and further if the lands are diverted to other use than equal measure of lands are made available for Gochar.

It is in the aforesaid back-ground and context the issue has to be examined.

The immediate cause for filing the writ petition was the impugned order Annexure-11 by which the State Government has sanctioned a grant of 375.08 bighas of Gochar land, part of Khasara No. 1334 to be converted into the Government land and be alloted to Veer Teja Mahila Shikshan and Shodh Sansthan, Mundwa (respondent No.3) for the various purposes of education for women and children stated in the order. Apart from the grant of 375.08 bighas of pasture land, it also sanctioned to allot two pasture land in phased manner; (i)- 194.19 Bigha of Gair Mumkin Agore land (catchment land) of Khasara No. 1339 and (ii)- 90.04 Bigha of Gair Mumkin Barani land comprised in Khasara No. 1342. In pursuance of the sanction letter dated 7.4.1997 the Collector issued order dated 23.4.1997 (Annex.-10) in favour of the respondent No.3 for allotment of 375.08 bighas land comprised in Khasara No. 1334.

The principal contention of the learned counsel for the appellant is that the pasture land cannot be allotted to any person for any purpose unless the adequate alternative land is otherwise provided for Gochar. It was also

pointed out that so far Agore land is concerned, this Court has ruled in public interest in D.B. Civil Writ Petition No. 1826/2001 that Agore land (Catchment Area) cannot be alloted or allowed to be encroached or used for any other purpose. Therefore, to the extent the State Government has sanctioned allotment of Agore land in favour of the respondent No.3, is contrary to the decision of this Court. No serious contention has been raised about sanction for further allotment of 90.04 bigha land comprising in Khasara No. 1342, which is recorded as Gair Mumkin Barani land.

The thrust of the respondent's contention is that the Rajasthan Tenancy (Government) Rules, 1955 enables the State Government to allot Gochar Land under Rule 7 thereof for other purposes but sub-rule (2) of the said rule 7 enjoin upon the State Government or Collector, as the case may be, to set apart equal measure of land as a pasture land in consultation with the Panchayat Samiti.

It was pointed out by the learned counsel for the respondent that alongwith making this sanction, the Collector had also recommended for conversion of 1339.10 bigha of Magra land comprised in Khasara No. 1616 as a pasture land.

On our enquiry during the course of hearing, an affidavit has been filed today on behalf of the respondent State confessing that no action has been taken on recommendation of Collector so far and reminder has been issued on 26.5.2006 for sanctioning the aforesaid proposal by further pointing out that out of land recommended for conversion into pasture land of Khasara No. 1616, 8 bigha land has been allotted to the Police Department for setting up a Police Station and 15 bigha land has been made available for setting up a power sub-station to power distribution agency and at present only 1286.10 bigha of land is available as Gair Mumkin land of Khasara No. 1616.

From the material on record, it is apparent that as per the order of the then Government of Jodhpur dated 4.4.1942 directions were issued to commence the proceeding to declare 20000 bigha of land as Gochar land as per statement given by Hawala Superintendent vide his letter dated 4.4.1942 in consideration of accepting Rs. 51,000/- as donation from Seth Mangi RamJi Bangar towards the Air, Defence Fund vide Annexure-1 and vide Annexure-3 out of total lands declared for Gochar purposes and in pursuance of that order 1099/19 bigha of land in Mundwa village came to be declared as a Gochar land.

In the reply the respondents have pointed out that on receipt of request made from the Villagers, by order dated 13.4.1960, 1287 bigha of land which included the land comprised in Khasara No. 1334 were set-apart as pasture or Gochar land. Along with reply, the order dated 13.4.1960 has been produced as Annexure-R/3, according to which the land was sought to be reserved for pasture for about 2200 cattle heads. The order also reveals that as on the date, the order was passed, 493 bigha of land comprised in khasara No. 1304 was only Gochar land, which was got released for Gochar at the request of Shri Banger. By including that land comprised in Khasara No. 1334, 1287.04 bigha of land was set-apart as Gochar land in 1960.

There is no dispute as the order Annexure-11 itself speaks that allotment of 375.04 bigha of land comprised in Khasara No. 1334 is out of the same land, which was set-apart vide Annexure-R/3 dated 13.4.1960 as Gochar.

During the course of hearing, the respondents were required to place on record the current position about the Gochar land available at Mundwa, in pursuance of which a chart was submitted. According to the Chart presently only 853.14 bigha of land is earmarked as Gochar or

pasture land. From the record pertaining to allotment of land to the respondent No.3 Institution, it transpires that vide proceedings of 22.2.1997 it was stated that in lieu of allotment of 375.08 bighas of land out of pasture land to the Institution in Village Mundwa, 1339.10 bihgas of Magra land comprised in Khasara No. 1616 be set-apart as alternative pasture land. When this came to the notice of the Court, learned counsel for the State was required to furnish information as to what has happened to this recommendation and that recommendation has admittedly not been acted upon so far and reminder has been issued only vide letter dated 26.5.2006 after court enquiry pointing out that out of land recommended for setting-apart as a Gochar land noticed above, 8 bighas of land have been allotted for construction of Police Station and 15 bighas of land have been allotted for setting-apart for Sub-Station of electricity distribution, remaining 1286.10 bighas land of the aforesaid Gair Mumkin Magra land was required to be declared as Gochar land.

It is a matter of great concern, that the State Government appeared totally insensitive to the requirement for providing adequate pasture land for the cattle, which is one of the important material source of our rural economy

and also it is an essential part of keeping ecological balance.

The facts reveal that in between 1942 to 1944 the then Marwar State has set-apart about 1100 bighas of land as Gochar land in Mundwa, which was reduced to only 493 bighas of land by 1960, clearly indicating that the Gochar land has been diverted to some other use without replenishing the same. In 1960, 1287 bihgas of land including the existing Gochar land was set-apart as pasture land for Village Mundwa. The material has not been placed before us about the cattle census of Village Mundwa since 1960 to watch for increase or decrease in the cattle population, and need for Gochar land of area. However, it can be assumed that during last 14 years the cattle must have also increased with general population as per the requirement of people and the need for pasture land too must have increased.

It will be appropriate to notice here that the Rajasthan Tenancy (Government) Rules, 1955, as currently exists envisages that the estimation of required pasture land for each village must be roughly in the scale of half bigha per cattle. In this connection it is also to be noticed that vide Circular dated 21.1.1957 it is clarified that the term “Cattle” used in rule 6 of the

Rajasthan Tenancy (Govt.) Rules, 1955, does not include Goats and Sheep, Camel or Horses but it refers only to bulls, bullocks, cows their progeny and buffaloes (male or female).

Thus, the scale of rule is that keeping in view that the availability of the culturable and unculturable land, the land capable for cattle grazing, which can be grazed by the cattle as defined aforesaid, the requisite measure of pasture land should be determined or provided. The land which is not capable for grazing by bulls, bullocks, cows their progeny and buffaloes (male and female) obviously does not fulfill the requirement of providing the requisite area for cattle grazing at the scale provided under Rule 6 of the Rajasthan Tenancy (Government) Rules, 1955. Therefore, keeping in view that the rules which permit the Government to divert the Gochar land for other permissible uses to the extent provided by the Rules also obligates the State Government or the authority under the Revenue department to maintain the requisite land set-apart for pasture or Gochar roughly at the scale stated in rule 6, that is to say, half bigha per cattle.

From the material on record and relevant record of village Mundwa, it is apparent that

according to the respondent State itself existing land for pasture was not enough for cattle census and additional land was needed for providing grazing ground, which is clear from the fact that while from the existing pasture land, 375.08 bighas land were diverted with the respondent No.3. It was also proposed to set-apart 1339.10 bighas of land way back in the year 1997 yet no progress has been made in that regard. Apparently this proposal appears to have been made to assuage feelings of people as it appears from the record that many representations have been received while allotment of land to the respondent No.3 was to be considered. Commending the grant of land for setting-up of any educational institution for emphasising with equal vehemence that the Gochar land ought not to be diverted or reduced but some other land may be allotted to the institution, but was not intended to be acted upon. There is no explanation that while Gochar land was comprehensively diverted to private educational institution, the Government has not stirred its arm for good nine years in furtherence of recommendation of Collector in terms of Rule 7(2). Government has miserably neglected to discharge its obligation to mute cattle folk, no such order has been issued for setting-apart the land as Gochar land after the allotment order was issued in favour of the

respondent No.3.

In the aforesaid circumstances, while keeping in view the public interest which the respondent No.3 Institution likely to serve and that it was obligation of the State Government to sanction the part of Gochar land to such purposes and that constructions have already come on the said land in question, the allotment of land comprised in Khasara No. 1334 in favour of the respondent No.3 need not be disturbed. However, the enabling power of the State Government or to the limited extent of the Collector to divert the pasture land for other uses is coupled with a duty to provide the equal amount of alternative land as pasture land in the area, and that the Government has failed to discharge its obligation in this regard, therefore, mandamus need be issued to the State authorities to consider and make a decision in respect of setting-apart the required alternative land as Gochar land of village Mundwa as per recommendation made simultaneously with allotment. While passing any order in this regard the State Government must consider the figures of the last census regarding cattle heads, the available material about the current cattle population and determine the required area in terms of rule 6 for grazing grounds for village Mundwa. While considering the setting-

apart the land for grazing cattle it must also be taken into account that only such land may be made available which are capable for raising grass, for cattle which are defined by the Government Order dated 21.1.1957 as noticed above.

Counsel for the petitioner has raised apprehension that the proposed land is Magra land, that is to say, the hillock and stonyi area, which may provide food for Goats and Sheeps, which are not included in the cattle heads and not useable as grazing ground for cattle, therefore, it may not be suitable for pasture land. For consideration of this aspect before making any order the concerned authority may give an opportunity to the petitioner for making their submission in this regard and consider the same. The orders about setting apart the additional land at village Mundwa as suggested vide proceedings dated 22.2.1997 noticed above or any other alternative suitable land should be passed within a period of three months and compliance report shall be placed on record on or before 30.9.2006.

Coming to the second part of the impugned order Annexure-11 for reserving the land to be allotted to the respondent No.3 in phased manner,

we have already noticed above that of land sought to be set-apart for allotment in future to the respondent No.3 is a part of Agore land comprised in Khasara No. 1339 measuring 194.19 bigha. There is no dispute about the fact that the Division Bench of this Court in D.B.Civil Writ Petition No. 1826/2001 had observed that :

> "It is unfortunate that 'Agore' lands in the State are being encroached upon or being allotted for raising housing colonies, schools, shops, commercial complexes and for various other purposes. If this trend continues, catchment areas in villages and towns will not be available for collection of water in the baories, nadis, tanks and lakes with the result that the State which is already suffering from drought for the last five years will suffer more because of non-availability of water."

The Court further observed that :

> "Keeping in view the interest of the Public at large and having regard to the imperative need to protect, create and conserve water resources, we direct the State, Panchayats and concerned Public bodies that henceforth "Agore" lands shall not be utilised for raising construction and they shall be left open without being tinkered with unless they are required for augmenting the water resources."

In view of the aforesaid, the proposed allotment of Agore land comprised in Khasara No.

1339 cannot be sustained and this deserves to be quashed and is accordingly quashed.

So far as setting-apart of 90.4 bigha of Gair Mumkin Barani land comprised in Khasara No. 1342 is concerned, we do not find any illegality in it.

Accordingly, this petition is disposed of in terms of the aforesaid directions relating to provide for adequate alternative land for grazing grounds and setting aside the order of setting -apart Agore land for allotment in favour of respondent No.3.

No costs.

(R.P.VYAS)J. (RAJESH BALIA)J.

RM/